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OGC 78-5420
8-17-78

16 AUG 1978

MEMORANDUM FOR: Director of Central Intelligence

OLC #78-306C

VIA: Deputy Director of Central Intelligence
General Counsel
Legislative Counsel
Comptroller

78-5851/4

FROM: John F. Blake
Deputy Director for AdministrationSUBJECT: Impact of Public Buildings Act (Prospectus)
on Acquisition of Space (U)

1. (U) Action Requested: It is requested that you sign and direct the attached letter to the Chairmen of the House and Senate Appropriations Committees.

2. (U) Background and Staff Position:

a. On 17 July 1978, Administrator Solomon of the General Services Administration (GSA) acceded to repeated requests and authorized the acquisition of leased space in the Metropolitan Washington Area (MWA) (see Attachment 1). However, this authorization was coupled with the requirement that the acquisition be effected in accordance with the provisions of the Public Buildings Act of 1959, as amended. This requires the preparation of a detailed prospectus in coordination with GSA, approval to proceed from the Office of Management and Budget (OMB), and, finally, authorization from the Public Works Committees in both houses of Congress. This process can take from 12 to 18 months to accomplish (with no guarantee of obtaining authorization to proceed) and only when it is successfully concluded will GSA begin the actual process of acquisition (market analysis, solicitations, etc.). This latter process normally takes another 9 to 12 months before a lease is actually signed and to this must be added at least 6 months for alterations. Assuming it will take 3 months just to prepare the prospectus, we, therefore, face a 30-month delay before significant relief from our space problems can be realized.

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b. The history of this specific acquisition can be traced to 12 December 1975 when the Chief, Real Estate and Construction Division, Office of Logistics, forwarded a Standard Form 81 (see Attachment 2) to GSA requesting 88,000 square feet of additional space. This particular request was tailored to acquisition of the remaining third of the [redacted] Thirty-two months have passed and subsequent Standard Form 81's were forwarded as dictated by changing circumstances ([redacted] management refused to lease the remaining space). Intermittently throughout the period, a moratorium on the acquisition of space was imposed, thus stalling all acquisition efforts.

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c. Notwithstanding the moratorium, the Agency continued to plan for the eventual acquisition as evidenced by the various budget submissions, both going from the Office of Logistics (OL) to the Comptroller and ultimately from the Comptroller to Congress. The audit trail commenced in August 1975 when the Director of Logistics forwarded his FY 1977 budget estimates for the Federal Buildings Fund to the Comptroller (see Attachment 3). Subsequently, the Comptroller's submission to OMB for FY 1977 carried forward OL's estimate of [redacted] for the acquisition (see Attachment 4). As a result of OMB's review, the budget submission to the Congressional Appropriations Committees was reduced and reflected a request for \$935,000 to fund the acquisition (see Attachment 5). DCI Bush, in an appearance before the House Appropriations Committee on 1 April 1976, was queried by Chairman Mahon concerning this line item in the budget (see Attachment 6) and justified the requirement.

d. There is little doubt that the acquisition was authorized and funds appropriated by Congress in FY 1977. Because acquisition was considered feasible and imminent, the requirement, as a distinct line item in the budget, was dropped in succeeding fiscal years. However, the requirement was carried over as a firm requirement in internal Agency budget documents (see Attachment 7 for OL's FY 1979 forecast) and to Congress by the Comptroller (see Attachment 8). The fundamental difference between the FY 1977 submission and those of succeeding years is one of format. Rather than reflecting a separate dollar amount in the "Expansion" column as was done in FY 1977, the requirement was lumped into the total needed to reimburse the Federal Buildings Fund under the Standard Level User Charges (SLUC).

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25X1 This dichotomy arises because the budget planning cycle begins each year in January with the issuance of the Program Call which is applicable to the fiscal year beginning 21 months later. Thus, budget planning for Fiscal Year 1978 and out years had to assume that the [] originally appropriated would automatically be required in succeeding fiscal years, and this sum was merely added to the aggregate SLUC payment base cost column in FY 1978 and subsequent submissions.

e. The crux of the matter is outlined in an Office of General Counsel (OGC) memorandum of 17 March 1978 (see Attachment 9) wherein OGC advised that if it can be shown that monies in excess of \$500,000 were appropriated for a specific purpose, the requirements imposed by the Public Buildings Act no longer pertain. Such a legal determination will allow the appropriate agency official to so certify in writing to the requesting agency, GSA in this instance, thus avoiding the requirement for a prospectus. Because the Federal Buildings Fund was established under an amendment to the Public Buildings Act and to avoid any appearance of misleading Congress, or GSA acting as our agent, it is appropriate to notify the Chairmen of the respective Appropriations Committees of the Agency's position and intent. A similar course of action was followed in May of 1978 regarding Project SAFE and other pressing construction requirements (see Attachment 10).

3. (U) Recommendation: It is recommended that you sign and dispatch the attached letter to the Chairmen of the House and Senate Appropriations Committees.

/s/ John F. Blake

John F. Blake

Atts

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Impact of Public Buildings Act (Prospectus) on Acquisition of Space (U)

FROM:		EXTENSION		NO.
John F. Blake Deputy Director for Administration				
TO: (Officer designation, room number, and building)		DATE		DATE
		RECEIVED		FORWARDED
1. General Counsel 7D07 Hqs.		8-17-78		OFFICER'S INITIALS ✓
2.				
3. Legislative Counsel 6C19 Hqs.		8-25-78		
4.				
5. Comptroller 4E06				
6.				
7. Deputy Director of Central Intelligence				
8.				
9. Director of Central Intelligence				
10.				
11.				
12.				
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15.				

To #9:
Sir:

While some of this language may be tortuous and extremely detailed, it is necessary for the record that we establish a clear audit trail that, in fact, this cost element was included in our congressional budget submission, and Congress knowingly acted upon it. The rationale for this has been established in the Office of General Counsel opinion covering a similar certification given for the SAFE/ADSTAR systems.

John F. Blake

OLC concurs in the recommendations of OGC.

Jim White

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